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IN THE

Supreme Court of the United States

October Term, 1953

No. 131

J. W. WHITEHOUSE, G. ORNDORFF, J. H. SYLVESTER, CLAUDE R. BARNES, R. SARCHETT and THE ORDER OF RAILROAD TELEGRAPHERS,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, WILLIAM H. CASTLE R. M. BUTLER, C. P. DUGAN, E. T. HORSLEY and J. E. KEMP,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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J. W. Whitehouse, G. Orndorff, J. H. Sylvester, Claude R. Barnes, R. Sarchett, and The Order of Railroad Telegraphers pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered by a divided Court on March 19, 1954. R. 121, 124.

OPINIONS BELOW

The District Court did not issue an opinion. Its Findings and Conclusions are in the record. R. 80, 83. The opinion of the Court of Appeals (R. 109) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 19, 1954. R. 124. The jurisdiction of this Court is invoked under Section 1254(a) of Title 28, United States Code.

QUESTIONS PRESENTED

1. Whether, while the National Railroad Adjustment Board is considering a claim of a labor organization that a carrier has violated a collective bargaining agreement, a District Court has jurisdiction to enjoin it from proceeding further with such consideration on the ground that it has not followed allegedly proper procedure.

2. Whether, while the National Railroad Adjustment Board is considering a claim of a labor organization that a carrier has violated a collective bargaining agreement, a District Court may properly enjoin it from proceeding further with such consideration on the ground that it has not followed allegedly proper procedure.

3. Whether, while the National Railroad Adjustment Board is considering a contention of a carrier that a claim should not be sustained because of the absence of allegedly requisite parties, a District Court has jurisdiction to enjoin the Board from giving further consideration to the claim until it has given notice to such allegedly requisite parties.

4. Whether, while the National Railroad Adjustment Board is considering a contention of a carrier that a claim should not be sustained because of the absence of allegedly requisite parties, a District Court may properly enjoin the Board from giving further consideration to the claim until it has given notice to such allegedly requisite parties.

5. Whether respondent has exhausted its administrative remedies for its contention that requisite parties are absent from a proceeding before the National Railroad Adjustment Board, prior to the final decision of the Board.

6. Whether, prior to a decision by the National Railroad Adjustment Board on a contention of the carrier that a claim should be denied because notice has not been given to allegedly requisite parties, an action to enjoin the Board from proceeding further is premature.

7. Whether, while the National Railroad Adjustment Board, with a referee sitting as a member is considering a contention that notice has not been given to "involved" parties, a District Court may enjoin further consideration of the claim on the ground that notice has not been given to "involved" parties.

8. Whether, prior to a decision by the National Railroad Adjustment Board on a contention of the carrier that a claim should be denied because the Board has not given notice to allegedly involved parties, there is a "case or controversy" between the carrier and the Board or its members.

9. Whether, if the National Railroad Adjustment Board should issue an invalid award, the defense of invalidity of the award in the statutory suit to enforce the award would be an adequate remedy to the carrier.

10. Whether a carrier is entitled to an injunction to prevent the National Railroad Adjustment Board from making an allegedly invalid award.

11. Whether the judicial remedy provided by the Railway Labor Act for challenging the validity of an award of the National Railroad Adjustment Board, by way of defense to an enforcement suit, is exclusive.

12. Whether, under Section 3, First, (j) of the Railway Labor Act, providing that the National Railroad Adjust-

ment Board "shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes", in a dispute arising from a claim that a carrier has assigned work in violation of a collective bargaining agreement, notice is required to others than the claimants and the carrier.

13. Whether, in the event the answer to question 12 is in the affirmative, the Board is without jurisdiction to make a decision in the absence of such notice.

14. Whether, in the event the answer to question 12 is in the affirmative, actual knowledge of the proceeding by the others allegedly required to be given notice satisfies such requirement.

STATUTES INVOLVED

The pertinent provisions of the Railway Labor Act (48 Stat. 1185, 45 U.S.C., §§ 151 et seq.) are set forth in the appendix.

STATEMENT

This action was brought by the Illinois Central Railroad Company (hereinafter referred to as the "Railroad") against the National Railroad Adjustment Board, Third Division (hereinafter referred to as the "Board") and its individual members, including the referee, to enjoin the Board from making any disposition of a claim filed against the Railroad by The Order of Railroad Telegraphers (hereinafter referred to as the "Telegraphers"), until the Board should serve a notice of said claim on the the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the "Clerks") and upon an individual represented by the Clerks, and to compel said defendants to serve notice of the claim upon the Clerks and said individual. R. 5, 43, 49, 80. Preliminary and permanent relief were requested. R. 5, 49. The Telegraphers were permitted to intervene as a defendant. R. 15.

The District Court granted a preliminary injunction against the Board deciding the claim. R. 85. An appeal was taken by the Telegraphers and the members of the Board selected by the labor organizations (hereinafter referred to as the "Labor Members"). R. 89. The appellants below are the petitioners here.

Although the parties are numerous, the facts are simple. On July 1, 1951, the Telegraphers filed a claim with the Board alleging that certain work at Palestine, Illinois, subject to the contract between the Telegraphers and the Railroad, had been assigned by the Railroad other than as provided in the contract. The claim was docketed as No. TE-5722. R. 45. The work in question had been assigned to a position subject to the contract between the Clerks and the Railroad. R. 45. The Clerks advised the Railroad that while it took no position on the question whether the Telegraphers' contract covered the work, it did take the position that its contract covered the work, and if the work should be assigned other than as provided in the Clerk's agreement it would present a claim for violation of its agreement. R. 48, 82. The Railroad thereupon argued to the Board that the claim was not really against it but was a dispute between the Telegraphers and the Clerks and should be dismissed unless the two labor organizations took positions before the Board. R. 45-6, 81. The Board did not serve a formal notice upon the Clerks to appear and be heard on the Telegraphers' claim, but the record before the Board showed that the Clerks had actual knowledge of the pendency of the proceeding. R. 17, 46-7, 67.

The ten regular members of the Board divided evenly on the question whether the claim should be dismissed because the Board had not given notice to the Clerks, and pursuant to Section 3(1) of the Railway Labor Act a referee was selected to sit as an additional member of the Board and dispose of the claim. R. 17-8. When Docket No. TE-5722 came on for hearing before the Board with the Referee sitting as a member, one of the Carrier Members

objected to proceeding with the hearing on the ground that formal notice had not been given to the Clerks or to members of the craft represented by the Clerks. R. 46, 81-2. When such objection was made, one of the Labor Members, who is a vice-president of the Clerks, stated that the Clerks were not "involved" in the dispute. R. 17. Railway Labor Act, Sec. 3, First, (j) directs that notice be given to persons "involved". The consideration of the objection was in private without the participation of the Referee. R. 46, 82. Upon resumption of the open hearing, the Carrier Member who had made the objection announced that his objection had resulted in a tie vote and was therefore lost. R. 46, 82. The hearing was resumed and argument presented to the Board by both sides. R. 46, 82. While the Board, with the Referee as a member, had the case under advisement, this action was brought to enjoin the Board from making a decision until after notice is given to the Clerks. R. 45, 49.

SPECIFICATION OF ERRORS TO BE URGED

The Court below erred

1. In holding that the federal courts may interfere with proceedings of the Board prior to a final decision of the Board.

2. In holding that the District Court had jurisdiction of the subject-matter.

3. In holding that the Railroad had exhausted its administrative remedies

4. In holding that the action was not premature.

5. In not holding that there was no case or controversy between the original plaintiff and defendants.

6. In not holding that the statutorily-prescribed method of reviewing Board action is exclusive.

7. In not holding that there was lack of equity jurisdiction because the statutory method of review is adequate.

8. In holding that the referee had no authority to participate in the decision of the questions of the existence of other "involved" parties and their identity.

9. In holding that the Board was required to give notice of the proceeding before it to the Clerks and to an individual clerk.

10. In holding that in the absence of such notice the Board was without jurisdiction to make any decision.

11. In holding that actual knowledge of the proceeding by any third parties did not satisfy any requirement of notice to them.

REASONS FOR GRANTING THE WRIT

With respect to the issues pertaining to notice to the Clerks in the situation presented, the Courts of Appeals are in conflict. With respect to the remaining issues the Court below has acted contrary to the consistent holdings of this Court, and has done so in a manner that threatens to frustrate the functioning of the Railway Labor Act by interjecting the federal courts into every stage of the proceedings under that Act.

1. Failure to Exhaust Administrative Remedies.

In this case the Railroad seeks to have the Board enjoined from proceeding with the claim because it has not given notice to the Clerks. Whether notice to the Clerks is required because they are "involved" in the dispute submitted by the Telegraphers is one of the issues that the Board, with the Referee sitting as a member, must decide and will decide if not enjoined from doing so.

In *Aircraft and Diesel Corp.* v. *Hirsch*, 331 U.S. 752; *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41; *Macauley* v. *Waterman S.S. Corp.*, 327 U.S. 540, and *Jonco*

Aircraft Corp. v. *Franklin*, 346 U.S. 11, this Court uniformly held that the continuation of administrative proceedings could not be enjoined on the ground that the administrative tribunal was without jurisdiction. In each of those cases this Court held that there could be no judicial determination of the agency's jurisdiction until the administrative proceeding was completed; if the administrative hearing or its result was invalid, it could then be judicially declared invalid. In *Yakus* v. *United States*, 321 U.S. 414, this Court held that a defendant in a criminal prosecution for violation of the price control statutes could not attack the validity of certain regulations since he had not availed himself of the administrative remedy for attacking them. It appeared that Yakus had very good grounds for attacking the regulations in an appropriate administrative proceeding, but this Court said that it could not assume that the administrative ruling would have been erroneous. See also *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, where this Court held that the very agency involved in this case, the National Railroad Adjustment Board, should be given the first opportunity to decide a question before it before the courts should intervene.

The decision below was contrary to the foregoing applicable decisions of this Court.

The failure by the Railroad to exhaust its administrative remedy was one of the reasons for which Judge Swaim dissented from the decision below. After quoting from *Aircraft and Diesel Corp.* v. *Hirsch, supra*, and discussing the purposes of the Railway Labor Act, he concluded (R. 121):

> "If either party to a claim before the Board were privileged to go into court and enjoin further proceedings by the Board each time the Board decided some preliminary matter or took, or failed to take, some procedural step to which the complaining party objected, there would be neither 'prompt' nor 'orderly' settlement of such disputes, and the above quoted fundamental purpose of the Railway Labor Act would be defeated."

2. The Action is Premature Because the Board's Decision May be in Accord With the Railroad's Contentions. There is Thus no Case or Controversy.

We had heretofore supposed that before judicial relief could properly be sought a petitioner must show that he has been or is being or is about to be hurt. In the instant case the Railroad may never be hurt by the allegedly improper procedure the Board is following. See *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, 567; *Allen* v. *Grand Central Aircraft Co.*, decided by this Court May 24, 1954. If permitted to decide, the Board may decide for the Railroad on the procedural ground or on the merits or on both. In any such event no harm would be caused to the Railroad. See *Order of Railroad Telegraphers* v. *N. O. T. & M. Ry. Co.*, 156 F. (2d) 1 (C.A. 8, 1946), cert. den. 329 U.S. 758. To be sure, the Board might make a decision that on appropriate judicial review might be found to be wrong. But the mere possibility of an erroneous decision is not the basis for enjoining administrative action. So long as the Board is given authority to decide questions, it must have authority to decide them either way. *Pope* v. *United States*, 323 U.S. 1, 14; *Burnet* v. *Desmornes y Alvarez*, 226 U.S. 145, 147. The Board has denied a number of awards to claimants because of lack of notice to third parties. See, e.g., Awards Nos. 5432, 5433, 5599, 5600, 5627, 5644, 5741, 5865. Indeed, the Referee on the claim here involved, who was one of the defendants in the District Court, has on occasion voted to remand a claim for further proceedings for lack of notice to third parties. See Award No. 6224.

Until the Board sustains or denies the claim, it cannot be known whether there is a case or controversy of which the federal courts could have cognizance. Thus, in *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, the National Labor Relations Board might have decided that no interstate commerce was involved and that it was therefore without jurisdiction. In such event there would be no controversy between the parties, nor could there be a contro-

versy until that Board made a contrary decision and also decided against the petitioner on the merits. That is exactly the situation we have here. Until the Board makes a final decision, we cannot know whether it and the Railroad disagree about any questions of fact or law or whether if there is disagreement it can cause the Railroad any harm. See also *Allen* v. *Grand Central Aircraft Co.*, decided by this Court May 24, 1954. This also was one of the numerous grounds on which Judge Swaim dissented from the decision below, pointing out that if the Board's final decision were in favor of the Railroad it would suffer no possible damage from the alleged procedural error. R. 123.

The decision below was contrary to all these principles.

3. The Decision Below Transfers to the Courts the Resolution of Questions Vested in the Adjustment Board for Initial Decision.

The Court below held that the Board, with the Referee sitting as a member, should be enjoined from proceeding further with the case because notice had not been given to certain allegedly involved parties, holding that the Referee had no authority to participate in deciding such a question. R. 115-6. Such holding has utterly frustrated the operation of the Railway Labor Act with respect to claims presented to the Board in which the carrier makes the contention that notice to others than the claimant and the carrier is required.

Prior to the decision below, when the Labor Members and the Carrier Members of the Board deadlocked on a carrier contention that notice was required to others than the claimants and the carriers, a referee was appointed pursuant to § 3, First (1) of the Railway Labor Act to sit with the Board as a member and decide whether such notice was required. But since the decision below, the National Mediation Board has no longer made appointments of referees in such cases, the administration of such claims is paralyzed, and the claims are simply piling up, because

there is no way that the deadlock can be resolved. Thus, in such cases, the decision below has stricken § 3, First (1) from the Act.

But even if referees should again be appointed in such cases, the decision below transfers from the Board to the federal courts the determination of any contention that third parties are involved, and if they are, their identity. If a referee is appointed, the decision below holds that the carrier may seek an injunction against the Board, with the referee sitting as a member, proceeding with its consideration of the claim. If the court finds that third parties are involved, the injunction would issue. If the court finds that third parties are not involved, presumably the injunction would not issue, and consideration by the Board could continue. But in either event it would be the court, and not the Board, that would make the decision whether third parties are involved. This, under a statute with respect to which this Court has repeatedly and emphatically stated that the courts have a minimum function, and except where expressly conferred, no function, with the administrative processes having priority of operation even where not expressly provided. *Switchmen's Union* v. *Nat. Med. Bd.*, 320 U.S. 297; *General Committee* v. *MKT R. Co.*, 320 U.S. 323; *Slocum* v. *D. L. & W. R. Co.*, 339 U.S. 239.

4. Even if the Board Should Issue an Invalid Award the Statutory Remedy of a Defense to an Enforcement Suit Would be Adequate.

It should be observed that the awards of the Board are not self-enforcing. The mere existence of an award (or, as in this case, the existence of the possibility of an award) in favor of the claimant deprives the carrier of nothing. The Board issues awards, but it does nothing about obtaining compliance with them. If the carrier does not comply with an award in favor of the claimant, then the claimant has two years within which to bring

the statutory proceeding for enforcement. Railway Labor Act, §§ 3 (p), (q). If the carrier does not comply, and an enforcement suit is not instituted within two years, the carrier has lost nothing. Cf. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 48-9. If a suit is brought by the claimant, then the carrier may raise in defense every argument that the Railroad is making here as well as any others it may think of later. In *Aircraft and Diesel Corp.* v. *Hirsch*, 331 U.S. 752, 775-7, this Court held such very circumstance to preclude judicial intervention pending conclusion of the administrative proceedings. In a number of cases enforcement of an award has been denied for a variety of defects. In appropriate cases enforcement has been denied for lack of notice to involved parties and their lack of actual knowledge. *Estes* v. *Union Terminal Co.*, 89 F. (2) 768 (C.A. 8, 1937); *Kirby* v. *Pennsylvania R. Co.*, 188 F. (2d) 793 (C.A. 3, 1951).

In *Washington Terminal Co* v. *Boswell*, 124 F. (2d) 235 (C.A., D.C., 1941), Judge (later Justice) Rutledge, after a detailed review of the legislation, squarely held that the remedy of a defense to an enforcement suit is adequate. To the same effect is *N. O. Public Belt R. Comm.* v. *Ward*, 182 F. (2d) 654 (C.A. 5, 1950).

5. The Judicial Remedy Specified by the Railway Labor Act for Challenging the Validity of an Award is Exclusive.

The Court below failed to follow the established rule that where Congress has specified a particular administrative or judicial procedure, such procedure is exclusive. *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381, 404; *Switchmen's Union* v. *Nat. Med. Bd.*, 320 U.S. 297, 301; *Wilder Mfg. Co.* v. *Corn Products Refg. Co.*, 236 U.S. 165, 174-5; *United States* v. *Babcock*, 250 U.S. 328, 331; *Yakus* v. *United States*, 321 U.S. 414. Similarly, where it specifies a particular judicial remedy for the review of administrative action, the specification of such remedy precludes any other. *Anniston Mfg. Co.* v. *Davis*, 301 U.S. 337; *Order*

of R. Tel. v. N. O. T. & M. Ry. Co., 61 F. Supp. 869, 879-80; *Arnson v. Murphy*, 109 U.S. 238; *Yakus v. United States*, 321 U.S. 414.

Although such is the general rule, numerous decisions in this Court and in the lower courts show that it is applied with perhaps singular rigidity in the field of controversies in railroad labor relations. The Court below has not complied with the repeated and emphatic holdings of this Court that in the field of labor controversies in the railroad industry the courts are without jurisdiction of such controversies except those specifically vested in the courts by the Railway Labor Act, and that except for the administrative and judicial procedures specifically provided by the Act for the adjustment of controversies, there were to be no remedies. *Switchmen's Union* v. *Nat. Med. Bd.*, 320 U.S. 297, 302; *General Committee* v. *MKT R. Co.*, 320 U.S. 323. In the latter case, this Court stated that as a result there may be many areas in this field where neither the administrative nor the judicial function could be utilized, but that this was only to be expected in view of the congressional purpose in enacting the legislation. In that case this Court granted certiorari because of the importance of the problems raised by the courts' interfering in controversies governed by the Railway Labor Act. 320 U.S. 323, 327. Although it agreed that the court below properly decided that the petitioner was not entitled to relief, it reversed because the court below had entertained the case, and remanded with instructions to dismiss for lack of jurisdiction. See also *General Committee* v. *Sou. Pac. Co.*, 320 U.S. 338; *In Re Central R. of N. J.*, 145 F. (2d) 351, affd. 326 U.S. 561; *Radio Officers Union* v. *Nat. Med. Bd.*, 181 F. (2d) 801, 802; *Washington Terminal Co.* v. *Boswell*, 124 F. (2d) 235, 244 (C.A., D.C., 1941); *Slocum* v. *D. L. & W. R. Co.*, 339 U.S. 239.

The decision of the majority below is contrary to all these emphatic pronouncements by this Court.

6. No Notice Was Required to be Given to the Clerks.

It is unnecessary for the Court to reach this question, in view of the foregoing. But it has been a troublesome question in the administration of the Railway Labor Act, and the Courts of Appeals are divided. It would facilitate the functioning of the Railway Labor Act if the Court should pass on this issue.

This issue is one of the questions pending before the Board for decision. It deals with the merits of what would be the controversy if the Board decides it contrary to the Railroad's contention. It is one of the questions that have been argued before the Board.

In *Order of Railroad Telegraphers* v. *N. O. T. & M. Ry. Co.*, 61 F. Supp. 869 (D.C., E.D. Mo., 1945), affd. 156 F. (2d) 1 (C.A. 8, 1946), cert. den. 329 U.S. 758, reh. den. 329 U.S. 829, the issue was brought into sharp focus. The Telegraphers had sought to intervene in a claim before the Board brought by the Clerks, and intervention was denied. The Telegraphers then sought to enjoin the application of an award in favor of the Clerks. It was held that not only did the Telegraphers have no right to intervene, but that it could not properly have been permitted to participate in the Board proceedings. To the contrary is the decision below by the Court of Appeals for the Seventh Circuit and expressions in other decisions by the same Court as well as by the Court of Appeals for the Third Circuit in *Kirby* v. *Penna. R. Co.*, 188 F. (2d) 793. This situation has given rise to a considerable quantity of litigation and to turmoil in the administration of the Railway Labor Act with respect to claims submitted to the Adjustment Board. It is important to the administration of that Act that this controversy be resolved.

7. If Notice to the Clerks Was Required, Such Requirement is Satisfied by the Clerks' Actual Knowledge of the Proceeding.

Prior to the decision below, it had uniformly been held in every case posing the question, including decisions by the Courts of Appeals for the Third, Seventh and Eighth Circuits, that where notice to third parties of a claim before the Adjustment Board was required, such requirement was satisfied without formal notice if the third parties had actual knowledge of the proceeding. *Estes* v. *Union*, 89 F. (2d) 768 (C.A. 8, 1937); *Hunter* v. *A. T. & S. F. Ry. Co.*, 188 F. (2d) 294 (C.A. 7, 1951), cert. den. 342 U.S. 819, reh. den. 342 U.S. 889; *Kirby* v. *Penna. R. Co.*, 188 F. (2d) 793 (C.A. 3, 1951). The court below refused to follow the above cases, including its own prior holding, on the ground that the principle was wrong in the light of additional facts presented. It thus appears that in this respect also the Court of Appeals for the Seventh Circuit is in disagreement with Courts of Appeals for other Circuits. The resolution of this issue in a particular case should not be left to the fortuity of geography.

CONCLUSION

The Court below has failed to follow established and clear principles of judicial review of the administrative process. Under its holding, the judicial function may be invoked at any stage of the administrative process when a participant is dissatisfied with the conduct of the agency. This has already resulted in the frustration of the functioning of the Railway Labor Act with respect to certain types of claims presented to the Adjustment Board. The decision below also transfers from the Board to the federal courts the function of deciding whether third parties are involved in claims presented to the Board. In addition, the decision below, with respect to its holding concerning the requirement of notice to third parties and the effect of actual knowledge in the absence of formal notice, is

in conflict with holdings in other circuits. A resolution of this conflict, and a reiteration of the applicability to proceedings before the Adjustment Board of the established principles governing judicial review of the administrative process, is necessary if the Railway Labor Act is to function as Congress intended.

Respectfully submitted,

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APPENDIX

Railway Labor Act (Pub. No. 257, 69th Cong., appd. May 20, 1926, 44 Stat. 577, as amended by Pub. No. 442, 73rd Cong., appd. June 21, 1934, 48 Stat. 926), 45 U.S.C., ch. 8; U.S.C.A., Title 45, secs. 151 et seq.

Section 2, Seventh:

> "No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."

Section 2, Tenth:

> "The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment for each offense, * * *"

Section 3, First (i):

> "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Section 3, First (j):

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them."

Section 3, First (l):

> "Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. * * *."

Section 3, First (p):

> "If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the pe-

titioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

Section 3, First (q):

"All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after."

Section 6:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. * * *."